



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
097091,538	09/16/98	HERMON TAYLOR	117-260

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HM22/1112

EXAMINER  
ALLEN, M

ART UNIT	PAPER NUMBER
1648	9

DATE MAILED: 11/12/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/091,538

Applicant(s)  
Hermon-Taylor et al.

Examiner  
Marianne P. Allen

Group Art Unit  
1645

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

- ☒ Claim(s) 1-11, 13-18, and 20-23 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claims 1-11, 13-18, and 20-23 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1645

Claims 12 and 19 have been cancelled.

This application has been filed under 35 U.S.C. §371.

This application contains the following inventions or groups of inventions which are not so linked as to form a single inventive concept under PCT Rule 13.1.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3 and 16-17, drawn to polypeptides, classified in class , subclass .
- II. Claims 4-9, drawn to polynucleotides, classified in class , subclass .
- III. Claims 10-11, drawn to antibodies.
- IV. Claims 13-14, drawn to methods of detection using the antibody.
- V. Claim 15, drawn to a method of detecting cell mediated immune reactivity.
- VI. Claims 18 and 20, drawn to a method of treatment.
- VII. Claims 21-23, drawn to a whole cell vaccine.

The inventions listed as Groups I-VII do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Group I forms a single inventive concept and contains claims directed to a first appearing polypeptide product. The first appearing product possesses no special technical feature as the prior art identified in the search report (PCT Form 210) can be applied against the claims of Group I and a special technical feature must define a contribution over the prior art. Groups II-III are drawn to structurally different products. Groups IV-VII are drawn to methods having different goals, method steps, and starting materials

Art Unit: 1645

Note that PCT Rule 13 does not provide for multiple products or methods within a single application.

Because these inventions do not relate to a single inventive concept under PCT Rule 13.1 as set forth above, restriction for examination purposes as indicated is proper.

A telephone call was made to Mr. Arthur Crawford on 10 November 1999 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne P. Allen, whose telephone number is (703) 308-0666. The examiner can normally be reached on Monday-Friday from 9:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa, Ph.D., can be reached on (703) 308-3995. Official FAX communications may be directed to either (703) 308-4242 or (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*Marianne P. Allen*

MARIANNE P. ALLEN  
PRIMARY EXAMINER

~~GROUP 1600~~

Art 1645